

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

EnCana Border Pipelines Limited and
1057533 Alberta Ltd.

Docket No. CP05-211-000

ORDER APPROVING SECTION 3 AUTHORIZATION AND ISSUING
PRESIDENTIAL PERMIT

(Issued November 14, 2005)

1. On April 29, 2005, EnCana Border Pipelines Limited (EnCana Border) and 1057533 Alberta Ltd. (Alberta Ltd.) filed an application seeking the necessary approvals to permit Alberta Ltd. to succeed EnCana Border as holder of the appropriate Natural Gas Act (NGA) section 3 authorization and Presidential Permit so as to effectuate a purchase and sale agreement between the parties' border.¹ The existing section 3 authorization and Presidential Permit authorize EnCana to operate and maintain natural gas transmission facilities described in Article 2 below at the international border between the United States and Canada.

¹ The Commission notes that the Presidential Permit and section 3 authorization which EnCana seeks to transfer to Alberta Ltd. were issued to 3698157 Canada Ltd. (Canada Ltd.), EnCana's predecessor, on January 11, 2001. *See Canadian-Montana Pipe Line Corp.*, 94 FERC ¶ 61,023 (2001). Later, Canada Ltd. changed its name to PanCanadian Border Pipelines Limited and then to EnCana as a result of a merger between PanCanadian Energy Corporation and Alberta Energy Company. However, Canada Ltd. did not file to amend its Presidential Permit and section 3 authorization to reflect the new name of the Permittee. Therefore, EnCana and Alberta Ltd. request the Commission to waive, to the extent necessary, any regulations in order to allow the transfer at this time of the Presidential Permit and section 3 authorization to Alberta Ltd. The Commission will grant such waiver and this order will refer to the current Permittee as "EnCana Border."

2. On June 21, 2005, the Commission sent copies of the application and draft Presidential Permit to the Secretary of State and the Secretary of Defense for their recommendations. Replies on behalf of the Secretary of State dated October 24, 2005, and on behalf of the Secretary of Defense, dated October 24, 2005, indicate no objection to the issuance of the Presidential Permit as described.

3. This order grants authority to EnCana Border to transfer to Alberta Ltd. its Presidential Permit and NGA section 3 authorization and amends the Permit and authorization to substitute Alberta Ltd. as the owner and operator of the border facilities.

Background

4. EnCana Border is a wholly owned subsidiary of EnCana Corporation. EnCana Corporation is a Canadian Federal corporation incorporated under the Canada Business Corporation Act, and is one of North America's largest independent oil and gas companies.

5. Alberta Ltd. is a corporation organized under the laws of Alberta and is a wholly owned subsidiary of Harvest Energy Trust (Harvest Trust), a royalty trust based in Calgary, Alberta. Harvest Operations manages the assets of Harvest Trust. Alberta Ltd. was incorporated on July 17, 2003, to own and operate the facilities for which assignment and transfer is sought.

6. The facilities were originally constructed by Canadian-Montana Pipe Line Corporation (Canadian-Montana) pursuant to NGA section 3 authorization and a Presidential Permit issued by the Commission on June 18, 1999.² On January 11, 2001, the Commission authorized Canada Ltd. to succeed Canadian-Montana as the holder of the NGA section 3 authorization and Presidential Permit so as to effectuate a purchase and sale agreement between the parties³.

7. Canada Ltd. changed its name to PanCanadian Border Pipelines Limited and then to EnCana Border Pipelines Limited as a result of the merger of PanCanadian Energy Corporation and Alberta Energy Company in April 2002. EnCana Border states that these name changes have not had any effect on the operation of the facilities.

² *Canadian-Montana Pipe Line Corp.*, 87 FERC ¶ 61,323 (1999).

³ 94 FERC ¶ 61,023 (2001).

8. The import facilities consist of (1) a gas meter station adjacent to Highway 4 approximately 0.5 mile north of the Village of Monchy, Saskatchewan, Canada; and (2) approximately 30 feet of 8-inch diameter pipeline, with a capacity of 10 MMcf per day, extending from the international boundary near the Village of Monchy, Saskatchewan, to an interconnection with the facilities of EnCana Energy Resources, Inc. in Montana.

9. The facilities for which a transfer is requested were constructed to transport low pressure natural gas from wells in the Monchy area to an interconnection with gathering facilities in Phillips County, Montana. EnCana Border states that the only economically viable tie-in location for those reserves is the existing gas gathering infrastructure across the international border in Montana.

Proposal

10. EnCana Border and Alberta Ltd. seek the necessary approvals to permit Alberta Ltd. to succeed EnCana Border as the holder of an NGA section 3 authorization and a Presidential Permit so as to effectuate a purchase and sale agreement between the parties. On April 22, 2005, Alberta Ltd. and Harvest Operations entered into an agreement by which Harvest Operations will operate the facilities on behalf of Alberta Ltd..

Consultation with Secretaries of State and Defense

11. On June 21, 2005, the Commission sent copies of the applications in Docket No. CP05-211-000 and draft Presidential Permit to the Secretary of State and the Secretary of Defense for their recommendations. A reply on behalf of the Secretary of State was filed in this docket on October 27, 2005. A reply on behalf of the Secretary of Defense was filed in this docket on November 2, 2005. The replies indicate no objection to the issuance of the Presidential Permit as described herein.

Notice and Interventions

12. Public notice of the application was published in the *Federal Register* on May 12, 2005 (70 *Fed. Reg.* 25029). No motions to intervene or protests to the application were filed.

Discussion

13. Pursuant to section 3 of the NGA and authority delegated by the Secretary of Energy, the proposal is subject to the jurisdiction of the Commission.⁴ The Commission has reviewed the application and finds that the proposal is not inconsistent with the public interest, provided that Alberta Ltd. adheres to the operational procedures approved in the June 18, 1999 order authorizing Canadian-Montana to construct and operate the facilities. We concur that the facilities provide an outlet for Monchy, Saskatchewan gas production and reserves, and the proposal will not impair the ability of EnCana Border or Alberta Ltd. to render transportation service in the United States at reasonable rates to existing customers. Furthermore, we believe that all existing public benefits will continue and no adverse harm will result.

14. As noted above, the Secretaries of State and Defense have stated no objection to the Commission's approval of the proposal. Accordingly, we will approve the issuance to Alberta Ltd. of section 3 authorization and a Presidential Permit.

Environmental Issues

15. Under the proposal, no new facility construction, abandonment, or modification of existing facilities will occur, and granting this application will not be a major federal action significantly affecting the quality of the human environment requiring the preparation of an environmental assessment or environmental impact statement.

The Commission orders:

(A) Pursuant to its authority under section 3 of the Natural Gas Act, as delegated by the Secretary of Energy, the Commission approves the operation by 1057533 Alberta Ltd. of the facilities located at the international boundary between the United States and Canada formerly authorized to EnCana Border Pipelines Limited and issues to 1057533 Alberta Ltd. a Presidential Permit authorizing the operation and maintenance of the facilities at the United States/Canada border, as discussed in this order and set forth in the appendix to this order.

⁴ In Delegation Order No. 00-004.00, 67 *Fed. Reg.* 8946, (February 27, 2002), the Secretary of Energy delegated to the Commission the authority to perform certain functions with respect to the regulations of imports and exports of natural gas.

(B) 1057533 Alberta Ltd. shall sign and return the Testimony of Acceptance of all provisions, conditions, and requirements of the Presidential Permit to the Secretary of the Commission within fifteen days of the issuance of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

**AMENDED PERMIT AUTHORIZING ENCANA BORDER PIPELINES
LIMITED (ENCANA BORDER) TO TRANSFER TO 1057533 ALBERTA, LTD.
AUTHORIZATION HELD IN THE NAME OF 3698157 CANADA LTD. (NOW
ENCANA BORDER) TO OPERATE AND MAINTAIN NATURAL GAS
FACILITIES AT THE INTERNATIONAL BOUNDARY BETWEEN THE
UNITED STATES AND CANADA**

**FEDERAL ENERGY REGULATORY COMMISSION
Docket No. CP05-211-000**

(Issued November 14, 2005)

EnCana Border, a wholly owned subsidiary of EnCana Resources Inc., a Canadian Federal corporation incorporated under the Canada Business Corporation Act and 1057533 Alberta, Ltd. (Alberta Ltd.), filed on April 29, 2005 in Docket No. CP05-211-000 a joint application pursuant to Executive Order Nos. 10485 and 12038 and the Secretary of Energy's Delegation Order No. 00-004.00, requesting that the Commission issue an order: (1) authorizing EnCana Border to transfer to Alberta Ltd. existing Natural Gas Act section 3 authorization (held in the name of EnCana Border's predecessor, 3698157 Canada Ltd.) to operate and maintain facilities at the United States/Canada international boundary between Monchy, Saskatchewan and Phillips County, Montana, for the importation of natural gas into the United States; and (2) authorizing EnCana Border to assign to Alberta Ltd. the January 11, 2001 Presidential Permit which was issued to 3698157 Canada Ltd. authorizing it to operate and maintain facilities at the Monchy, Saskatchewan/Montana import point.

By letter dated October 24, 2005, the Secretary of State, and by letter dated October 24, 2005, the Secretary of Defense favorably recommended that the amended Permit be granted. The Federal Energy Regulatory Commission finds that the issuance of an amended Permit to Alberta Ltd. is appropriate and consistent with the public interest.

Pursuant to the provisions of Executive Order Nos. 10485 and 12038, dated September 3, 1953, and February 3, 1978, respectively, the Secretary of Energy's Delegation Order No. 00-004.00, effective December 6, 2001, and the Commission's regulations, permission is granted to Alberta Ltd. (Permittee) to operate and maintain the natural gas facilities described in Article 2 below, upon the terms and conditions of the Permit.

Article 1. It is expressly agreed by the Permittee that the facilities herein described shall be subject to all provisions and requirements of this Permit. This Permit may be

modified or revoked by the President of the United States or the Federal Energy Regulatory Commission and may be amended by the Federal Energy Regulatory Commission, upon proper application therefor.

Article 2. The following facilities are subject to this Permit:

Approximately 30 feet of 8-inch diameter pipeline, with a capacity of 10 MMcf per day, extending from the international boundary near the Village of Monchy, Saskatchewan, Canada to an interconnection with the facilities of EnCana Energy Resources Inc. in Montana.

Article 3. The natural gas facilities authorized herein, or which may subsequently be included herein by modification or amendment, may be utilized for the importation or exportation of natural gas between the United States and Canada only in the amount, at the rate, and in the manner authorized under Section 3 of the Natural Gas Act.

Article 4. The operation and maintenance of the aforesaid facilities shall be subject to the inspection and approval of representatives of the United States. The Permittee shall allow officers and employees of the United States, showing proper credentials, free and unrestricted access to the land occupied by the facilities in the performance of their official duties.

Article 5. If in the future it should appear to the Secretary of the Army that any facilities or operations permitted hereunder cause unreasonable obstruction to the free navigation of any of the navigable waters of the United States, the Permittee may be required, upon notice from the Secretary of the Army, to remove or alter the same so as to render navigation through such waters free and unobstructed.

Article 6. The Permittee shall be liable for all damages occasioned to the property of others by the operation or maintenance of the facilities, and in no event shall the United States be liable therefor. The Permittee shall do everything reasonable within its power to prevent or suppress fires on or near land occupied under this Permit.

Article 7. The Permittee agrees to file with the Commission, under oath and in such detail as the Commission may require, such statements or reports with respect to the natural gas exported, imported, or the facilities described herein, as the Commission may, from time to time, request. Such information may be made available to any federal, state, or local agency requesting such information.

Article 8. Neither this Permit nor the facilities, nor any part thereof, covered by this Permit shall be voluntarily transferred in any manner, but the Permit shall continue in

effect temporarily for a reasonable time in the event of the involuntary transfer of the facilities by operation of law (including transfer to receivers, trustees, or purchasers under foreclosure or judicial sale) pending the making of an application for a permanent Permit and decision thereon, provided notice is promptly given in writing to the Commission accompanied by a statement that the facilities authorized by this Permit remain substantially the same as before the involuntary transfer. The Permittee shall maintain the facilities in a condition of repair for the efficient transportation of natural gas and shall make all necessary renewals and replacement.

Article 9. Upon the termination, revocation, or surrender of this Permit, the Commission shall determine which of the authorized facilities shall be removed and which shall remain in place. The facilities authorized shall be removed within such time as the Commission may specify, and at the Permittee's expense. Upon failure of the Permittee to comply with the Commission's direction to remove any authorized facilities, or any portion thereof, the Commission may direct that possession of the same be taken and the facilities be removed at the Permittee's expense, and the Permittee shall have no claim for damages by reason of such possession or removal.

Article 10. The Permittee agrees that when, in the opinion of the President of the United States, evidenced by a written order addressed to it as holder of this Permit, the safety of the United States demands it, the United States shall have the right to enter upon and take possession of any of the facilities, or parts thereof, maintained or operated under this Permit, and all contracts covering the transportation or sale of natural gas by means of said facilities, to retain possession, management, and control thereof for such length of time as may appear to the President to be necessary to accomplish said purposes, and then to restore possession and control to the Permittee; and in the event that the United States shall exercise such right it shall pay the Permittee just and fair compensation for the use of said facilities upon the basis of a reasonable profit in time of peace, and the cost of restoring said facilities to as good condition as existed at the time of taking over thereof, less the reasonable value of any improvements that may be made thereto by the United States and which are valuable and serviceable to the Permittee.

Article 11. This Permit is subject to any action which the Government of the United States may in the future deem expedient or necessary to take in case any part of the aforesaid facilities comes into the control of any foreign government.

Article 12. The Government of the United States shall be entitled to the same or similar privileges as may by law, regulation, agreement, or otherwise, be granted by the Permittee to any foreign government.

By direction of the Commission.

Magalie R. Salas,
Secretary.

IN TESTIMONY OF ACCEPTANCE of all the provisions, conditions and requirements of this Permit, the Permittee this day of _____, 2005 has caused its name to be signed by _____, [pursuant to a resolution of its Board of Directors duly adopted] on the __ day of _____, 2005, a certified copy of the record of which is attached hereto.

1057533 Alberta Ltd.

By _____

(Attest)

Executed in triplicate